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10/650,232	08/28/2003	Andrew P. Bowman	02-1492	6402
74576	7590	04/01/2009	EXAMINER	
HUGH P. GORTLER			HARTMAN JR, RONALD D	
23 Arivo Drive			ART UNIT	
Mission Viejo, CA 92692			PAPER NUMBER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/650,232

Applicant(s)

BOWMAN ET AL.

Examiner

RONALD D. HARTMAN JR

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-11, 13-15, 17-19, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) 24 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-11, 13-15, 17-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Newly submitted claims 24 and 25 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Newly filed claims 24 and 25 do not require a tool operator, per se, as required by all of the other previously presented claims. The operator has been interpreted to be an actual person. Further, none of the previously filed claims require a tool operator unit, per se, as is required by the newly filed claims.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 24 and 25 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17, line 5, "at the input device" lacks proper antecedent basis by virtue of the applicant deleting the "input and output device", in line 2, from the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-11 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Csipkes et al., U.S. Patent No. 6,188,402.

Applicant's claim 1 recites a system.

The system is used for presenting a product building plan to a tool operator.

Examiner Note:

(a) a product, as per Dictionary.com, is defined as, “a thing produced by labor”;

(b) a tool, as per Dictionary.com, is defined as, “anything used as a means of accomplishing a task or purpose”.

The system is comprised of a first means for selecting a build plan, in response to entered product information, the build plan including a tool version selected from plural tools; and a second means for outputting the build plan to an operator.

Examiner Note:

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[0007] of the applicant's specification describes a processor performing the selection of the build plan, and outputting the selected build plan. In other words, the processor is responsible for both actions.

The claim amounts to a system (a processor) that selects a build plan, in response to entered product information, the build plan including a tool version, wherein the build plan is outputted (via a display) to a tool operator.

The applicant has argues that Csipkes does not teach these features.

The examiner respectfully disagrees. Clearly Csipkes discloses a display screen for display of an assembly procedure to be followed by an assembler (e.g. See Abstract).

Figure 3(b) shows a module being selected, and then a process being selected (e.g. See elements 102 and 103). These selections are based on items stored in a memory.

Based on these selections, proper work instructions are loaded (e.g. See element 109)

Figure 6(a) shows that parts required are displayed. This Figure also shows that specific IC's (versions of IC's) are used for the assembly procedure. The parts correspond to the claimed tools, per se, as they are used as a means for accomplishing a task (assembly of a product).

As per claim 9, the rejection of claim 1, from above, is applied herein.

As per claims 2 and 10, Csipkes teaches a product line number (e.g. See C3 L1-3).

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As per claims 3 and 11, it is believed that these features are anticipated by Csipkes (e.g. See Figure 2 and C3 L10-13).

As per claims 5-6 and 13-14, as already mentioned above, it is believed tool version information and tool component information are adequately disclosed by at least Figures 6(a) and 6(b).

As per claims 7 and 15, automatic selection of a build plan is inherent to Csipkes.

As per claim 8, these features are adequately disclosed by at least Figures 6(a) and 6(b).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-2, 7-10 and 13-15 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2, 4-5, 7, 12-13 and 15-16 of U.S. Patent No. 7,212,882. Although the conflicting claims are not identical, they are not patentably distinct from each other because the differences would have been obvious to one of ordinary skill in the art at the time the invention was made.

Claim 1 is rendered obvious by claims 1, 7 and/or by claim 12 of U.S. Patent No. 7,212,882. Although the conflicting claims are not identical, the differences would have been obvious to one of ordinary skill in the art at the time the invention was made.

As per claim 2, the combination of patented claims 1-2 and 4-5 teach these features.

As per claim 7, this feature is disclosed by patented claim 12.

As per claim 8, these features are disclosed by the combination of patented claims 12-13 and 15.

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Similar analogy is made with respect to pending claims 9-10 and 13-15.

Allowable Subject Matter

Claims 17-19, specifically independent claim 17 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RONALD D. HARTMAN JR whose telephone number is (571)272-3684. The examiner can normally be reached on Mon.-Fri., 11:00 - 8:30 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decady can be reached on (571) 272-3819. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public

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PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ronald D Hartman Jr./

Primary Examiner, Art Unit 2121

March 30, 2009

RDH